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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 JOHN STEVEN OLAUSEN,

Case No. 3:15-cv-00525-MMD-VPC

10 Petitioner,

ORDER

11 v.

12 ISIDRO BACA, et al.,

13 Respondents.  
14

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to U.S.C. § 2254 by a Nevada state prisoner. By order filed October 21, 2015, the Court dismissed this action without prejudice because petitioner failed to submit a proper application to proceed *in forma pauperis*. (Dkt. no. 4.) Judgment was entered on October 21, 2015. (Dkt. no. 5.)

15 **I. MOTION FOR RELIEF FROM JUDGMENT**

16 Petitioner has filed a motion for relief from judgment. (Dkt. no. 7.) Petitioner  
17 explains that he placed a proper *in forma pauperis* application in the same envelope as  
18 his habeas petition and gave it to prison officials for mailing. Petitioner further explains  
19 that prison officials inspected his outgoing mail and removed his *in forma pauperis*  
20 application from the packet that was mailed to this Court. (Dkt. no. 7.) Petitioner further  
21 points out that he has now paid the \$5.00 filing fee for this action. (Dkt. no. 6.) Due to  
22 mistake and excusable neglect, petitioner's motion for relief from judgment is granted.  
23 Fed. R. Civ. P. 60(b). The Court vacates the order and judgment dismissing this action  
24 for failure to submit a proper *in forma pauperis* application.

1       **II. DISMISSAL OF PETITION AS SUCCESSIVE**

2           This case must be dismissed as successive for failure to comply with the  
3 provisions of 28 U.S.C. § 2244(b). Section 2244(b) requires that a petitioner seeking to  
4 file a “second or successive” habeas petition must first obtain authorization from the  
5 federal Court of Appeals to do so. See *Burton v. Stewart*, 549 U.S. 147, 157 (2007)  
6 (where petitioner did not receive authorization from the federal Court of Appeals before  
7 filing a second or successive petition, “the District Court was without jurisdiction to  
8 entertain [the petition]”); *Barapind v. Reno*, 225 F.3d 1100, 1111 (9<sup>th</sup> Cir. 2000) (“the  
9 prior-appellate-review mechanism set forth in § 2244(b) requires the permission of the  
10 Court of Appeals before a second or successive habeas application under § 2254 may  
11 be commenced”). If an earlier federal petition is dismissed on the merits, any  
12 subsequent petition challenging the same conviction or sentence will constitute a  
13 second or successive petition. See, e.g., *Henderson v. Lampert*, 396 F.3d 1049, 1052-  
14 53 (9<sup>th</sup> Cir. 2005).

15           The habeas petition in the instant case is the latest of several successive habeas  
16 corpus petitions filed by petitioner John Steven Olausen in this Court. The Court takes  
17 judicial notice of the many habeas corpus actions filed by Olausen in this Court under  
18 the following case numbers: 3:01-cv-00499; 3:05-cv-00631; 3:06-00257; 3:08-cv-00447;  
19 3:08-cv-00527; 3:10-cv-00388; and 3:15-cv-127. Petitioner’s first habeas corpus action,  
20 3:01-cv-00499, was reviewed on the merits and denied by order filed June 28, 2005.  
21 (Dkt. no. 87 in 3:01-cv-00449). Petitioner then filed a habeas petition under case no.  
22 3:05-cv-00631, asserting, as he does in this case, that he was being imprisoned  
23 unlawfully without a valid judgment of conviction. This Court determined that case 3:05-  
24 cv-00631 was successive and transferred the case to the Ninth Circuit Court of Appeals  
25 pursuant to 28 U.S.C. § 1631, for consideration under 28 U.S.C. § 2244(b)(3)(A). (Dkt.  
26 nos. 4 & 8 in 3:05-cv-00631). The Ninth Circuit Court of Appeals ruled that petitioner  
27 failed to show that he was imprisoned under an invalid conviction or sentence; the Court  
28 of Appeals denied petitioner’s application to file a successive petition. (Dkt. no. 8, Case

1 no. 06-15930, Ninth Circuit Court of Appeals.) Subsequently, petitioner filed habeas  
2 petitions in case nos. 3:06-cv-00257, 3:08-cv-00447, 3:08-cv-00527, and 3:10-cv-  
3 00388, all of which were dismissed as successive petitions. Most recently, petitioner's  
4 habeas petition filed at 3:15-cv-00127 was dismissed as successive. In the order  
5 dismissing the petition in 3:15-cv-00127, the Court took the opportunity to chronicle  
6 petitioner's many successive habeas petitions filed in this Court. (Dkt. no. 16 in 3:15-cv-  
7 00127.) Petitioner has not obtained authorization from the Ninth Circuit Court of Appeals  
8 to file the instant successive habeas petition. As such, the Court cannot entertain the  
9 petition and it will be dismissed as successive.

10 **III. DENIAL OF CERTIFICATE OF APPEALABILITY**

11 In order to proceed with any appeal, petitioner must receive a certificate of  
12 appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9<sup>th</sup> Cir. R. 22-1; *Allen v.*  
13 *Ornoski*, 435 F.3d 946, 950-951 (9<sup>th</sup> Cir. 2006); see also *United States v. Mikels*, 236  
14 F.3d 550, 551-52 (9th Cir. 2001). District courts are required to rule on the certificate of  
15 appealability in the order disposing of a proceeding adversely to the petitioner or  
16 movant, rather than waiting for a notice of appeal and request for certificate of  
17 appealability to be filed. Rule 11(a) of the Rules Governing Section 2254 and 2255  
18 Cases. Generally, a petitioner must make "a substantial showing of the denial of a  
19 constitutional right" to warrant a certificate of appealability. 28 U.S.C. § 2253(c)(2);  
20 *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). "The petitioner must demonstrate that  
21 reasonable jurists would find the district court's assessment of the constitutional claims  
22 debatable or wrong." *Id.* (quoting *Slack*, 529 U.S. at 484). In order to meet this threshold  
23 inquiry, the petitioner has the burden of demonstrating that the issues are debatable  
24 among jurists of reason; that a court could resolve the issues differently; or that the  
25 questions are adequate to deserve encouragement to proceed further. *Id.* In this case,  
26 no reasonable jurist would find this Court's dismissal of the petition as successive  
27 debatable or wrong. The Court therefore denies petitioner a certificate of appealability.

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1     **IV. CONCLUSION**

2                 It is therefore ordered that petitioner's motion for relief from judgment (dkt. no. 7)  
3 is granted.

4                 It is further ordered that the Court's order and judgment of October 21, 2015,  
5 dismissing this action without prejudice for failing to file a proper *in forma pauperis*  
6 application, (dkt. nos. 4 & 5) are vacated.

7                 It is further ordered that this action is dismissed as a successive petition.

8                 It is further ordered that a certificate of appealability is denied.

9                 It is further ordered that the Clerk of Court shall enter judgment accordingly.

10                 It is further ordered that the Clerk of Court shall electronically serve respondents  
11 with the petition (dkt. no. 1-1) and a copy of this order. The Clerk of Court shall add  
12 Attorney General Adam Paul Laxalt to the CM/ECF docket sheet as counsel for  
13 respondents. No response is required from respondents, other than to respond to any  
14 orders directed to respondents by a reviewing court.

15                 DATED THIS 24<sup>th</sup> day of November 2015.



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17                 MIRANDA M. DU  
18                 UNITED STATES DISTRICT JUDGE  
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